No. 82-1818

IN THE

Supreme Court of the United States

October Term, 1982

BEVERLEE A. MYERS, individually and in her official capacity as Director of the California State Department of Health Services; and ELIZABETH LYMAN, individually and in her official capacity as Deputy Director of the California State Department of Health Services,

Petitioners,

v.

ANTONIA BELTRAN, individually and on behalf of all others similarly situated,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the district court have jurisdication on remand to vacate its earlier judgment and decide issues which had been previously decided?

2. Whether California's transfer of assets rule, which was in effect up to and including June 30, 1981 and which denied benefits to any individual who transferred assets so as to qualify for medical assistance (Medi-Cal), conflicted with the federal Medicaid statutes and regulations and thus violated the Supremacy Clause.

3. Does the immunity provided by the Eleventh Amendment of the United States Constitution bar notice to class members which requires in effect retroactive payment of benefits?

4. Did the district court abuse its discretion in requiring individual notification to class members?

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3. Does the immunity provided by the Eleventh Amendment of the United States Constitution bar notice to class members which requires in effect retroactive payment of benefits?

4. Did the district court abuse its discretion in requiring individual notification to class members?

LIST OF PARTIES

Petitioners: WILLIAM D. DAWSON, Interim Director of the California Department of Health Services and JO ANN WRAY, acting Deputy Director of the California Department of Health Services[1]

Respondent: ANTONIA BELTRAN[2]

OPINIONS BELOW

The opinion of the Court of Appeals, as yet unreported, appears as Appendix A. The district court's unreported Findings of Fact and Conclusions of Law, the order vacating its judgment of May 10, 1979, filed February 4, 1982, and the final judgment filed March 3, 1982, are attached at Appendix B.

Prior opinions in this case, which are not sought to be reviewed by this petition, are officially reported at *Dawson v. Myers* (9th Cir. 1980) 622 F.2d 1304, *vacated* and *remanded sub. nom. Beltran v. Myers* (1981) 451 U.S. 625; and *Beltran v. Myers* (9th Cir. 1982) 677 F.2d 1317.

JURISDICTION

The Court of Appeals filed its opinion on March 8, 1983. This Court's jurisdiction is invoked under 28 United States Code, section 1254(1).

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[1]Beverlee A. Myers resigned as Director of the Department of Health Services on January 3, 1983, and was succeeded by an interim Director William D. Dawson. Jo Ann Wray succeeded Elizabeth Lyman as acting Deputy Director of the Department of Health Services on December 15, 1982. The appropriate change should be made in the file and the caption. (Supreme Court Rule 48(3).)

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[2]Rossye Dawson, the original named plaintiff, died while this case was before the district court. Enosinsio Manahan, another named plaintiff, has also died.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The following provisions are significantly involved in this case, and because of their length, are cited here with their pertinent texts set out verbatim in Appendix C:

1. Title 42, United States Code, sections 1396a (a)(10)(C), 1396a(a)(17)(B);

2. California Welfare and Institutions Code section 14015;

3. Title 42, Code of Federal Regulations, section 435.401(c)(2);

4. Title 22, California Administrative Code, section 50409.

STATEMENT OF THE CASE

1. In 1965, Medicaid was established under Title XIX of the Social Security Act. (42 U.S.C. § 1396 et seq.) Its purpose was to enable each state "... as far as practicable under the conditions in such state, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services. . .". (42 U.S.C. § 1396.) This cooperative federal-state program is designed to provide medical assistance to those individuals who truly are in need of such assistance. A state that elects to participate in the program is required to adopt a state plan for assistance which conforms to federal law. (42 U.S.C. § 1396(b).) Once a state plan is approved by the Secretary of the Department of Health and Human Services (HHS), the state is eligible to receive federal financial assistance for its program. (42 U.S.C. § 1396.)

One requirement of federal law binding upon a state which operates a Medicaid program is that it must provide coverage to a group of persons known as the "categorically needy" — primarily those individuals who receive financial assistance under Title IV-A of the Social Security Act (Aid to Families with Dependent Children, referred to as "AFDC") or Title XVI of the Social Security Act (Supplemental Security Income for the Aged, Blind, and Disabled, referred to as "SSI".) (42 United States Code, section 1396a(a)(10)(A), and 42 Code of Federal Regulations, section 435.4.) States also have the option of covering a group of individuals who would qualify for Title IV-A or Title XVI financial assistance except that they have sufficient income and resources to cover their needs, apart from medical expenses. This group of persons is known as the "medically needy." (42 U.S.C. §1396a(a)(10)(C), 42 C.F.R. §435.4.) This case concerns this latter group.

2. California has chosen to participate in the Medicaid program. California's state plan for medical assistance (referred to as the "Medi-Cal program") was approved by the Secretary and the state is presently receiving federal funds. California has enacted a comprehensive body of statutes and promulgated regulations to administer its Medi-Cal program. (Welf. & Inst. code §14000 et seq.; 22 Cal. Admin. Code §50000 et seq.) As part of that program, California has elected to cover the optional medically needy. (Welf. & Inst. Code §§14005.7, 14051.)

In 1965, California adopted Welfare and Institutions Code section 14015. This statute and the regulations promulgated thereunder (22 Cal. Admin. Code §§50408, 50409), comprise what is known as California's transfer of assets rule. The rule created a rebuttable presumption that any transfer of assets for less than adequate consideration within two years prior to applying for assistance

was made with the intent to qualify for medical assistance. The applicant had the opportunity to rebut the presumption by providing evidence ". . . that adequate resources were available at the time of the transfer of the property for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources." (22 Cal. Admin. Code § 50409.) Failure to rebut the presumption resulted in ineligibility for medical assistance for a specified period of time. (22 Cal. Admin. Code § 50411.) No such rule was applied to the categorically needy.

3. Respondent represents a class consisting of all those aged, blind, and disabled individuals who, as of June 19, 1978, were denied Medi-Cal benefits because of California's transfer of assets rule. These individuals were denied benefits because they had transferred assets for less than adequate consideration prior to applying for Medi-Cal and were unable to overcome the presumption that they had done so with intent to qualify for assistance. The gravamen of plaintiff's complaint was that the rule was inconsistent with applicable portions of the Social Security Act and therefore violated the Supremacy Clause. It was also asserted that the rule violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The district court granted defendants' motion for summary judgment on May 10, 1979 finding that the rule violated neither the Supremacy Clause nor the Fourteenth Amendment. The Court of Appeals affirmed in *Dawson v. Myers* (9th Cir. 1980) 622 F.2d 1304.

4. On December 28, 1980, the Boren-Long Amendment (Pub. Law 96-611, § 5, 94 Stats. 3567) was signed into law by the President. This Amendment expressly permits the use of a transfer of assets rule as of July 1, 1981 to the medically needy in Title XIX Medicaid program, (amending sec. 1902 of the Soc. Sec. Act, 42

U.S.C. § 1396a(j)) and to the categorically needy in Title XVI, SSI/SSP cash assistance program (amending § 1613 of the Soc. Sec. Act, 42 U.S.C. § 1382b(c).)

5. This Court granted certiorari on the sole issue of the Supremacy Clause violations. In a *per curiam* decision filed May 18, 1981, this Court vacated the Court of Appeal's decision and remanded the case for reconsideration to afford the plaintiff "the opportunity to argue the validity of the California law under the new federal law—an issue that was not addressed by the parties in this court." (*Beltran v. Myers* (1981) 451 U.S. 625.) On June 25, 1981, the Court of Appeals remanded the case to the district court with instructions to determine the import of the Boren-Long Amendment on the rights of the parties.

6. On July 31, 1981, the district court issued a preliminary injunction partially enjoining defendants from denying Medicaid eligibility to anyone who applied for benefits after the effective date of the Boren-Long Amendment. California's rule was found to be more restrictive than the new federal transfer of assets rule principally because California did not exclude certain exempt assets from consideration as transferred assets for purposes of determining eligibility. The Court of Appeals affirmed. (*Beltran v. Myers* (9th Cir. 1982) 667 F.2d 1317.) The district court subsequently entered summary judgment on the merits in favor of plaintiff in part and defendants in part. Neither side chose to appeal this judgment.

7. Furthermore, on February 8, 1982, the district court vacated its earlier judgment entered May 10, 1979 which found that California's transfer of assets rule did not conflict with federal law in effect prior to the Boren-Long Amendment. The court concluded that California's rule violated the "comparability" requirement of 42 United States Code, section 1396a(a)(10)(C)(i), the "availabil-

ity" requirement of 42 United States Code, section 1396a(a)(17)(B) and 42 Code of Federal Regulations, section 435.401(c). In deciding these issues which had previously been decided, the district court deviated from this Court's decision in *Beltran v. Myers* (1981) 451 U.S. 625. The district court ordered defendants to individually identify and notify class members of their right to seek reimbursement at an estimated expense of $2,341,935. (Appendix B) In addition, the order requires the defendants to notify class members of their right to a redetermination of eligibility for benefits, and if otherwise eligible, to receive retroactive benefits. The order permits class members or their estates and providers of health care services to claim reimbursement for medical bills. The projected cost to California is millions of dollars. On March 8, 1983, the Court of Appeals affirmed. (Appendix A.)

REASONS FOR GRANTING THE WRIT

I

BY VACATING ITS EARLIER JUDGMENT AND DECIDING ISSUES WHICH HAD BEEN PREVIOUSLY DECIDED THE DISTRICT COURT DEVIATED FROM THIS COURT'S DECISION IN *BELTRAN V. MYERS* (1981) 451 U.S. 625

The doctrine of law of the case precludes lower courts from deciding issues on remand which were decided on a prior appeal. (*Quern v. Jordan* (1979) 440 U.S. 332, 347, n. 18.) This principle also excludes lower courts from deciding an issue which was resolved implicitly despite the lack of any explicit statement. (*Conway v. Chemical Leaman Tank Lines, Inc.* (5th Cir. 1981) 644 F.2d 1059, 1062.)

The district court vacated its earlier decision of May 10, 1979 upholding the validity of California's pre-Boren-Long Amendment transfer of assets rule and decided again a question that had been previously determined in defendants' favor. The majority opinion of this Court, in its *per curiam* decision, does not require the vacating of the district court's decision with regard to the validity of the transfer rule under pre-Amendment law. The Supreme Court unanimously decided to remand the case to the Court of Appeals so that plaintiff would have "the opportunity to argue the validity of the California law *under the new federal law*—an issue that was not addressed by the parties in this Court." (Emphasis added.) (*Beltran v. Myers* (1981) 451 U.S. 625, 628.) Justice Stevens stated in his concurring opinion that the transfer of assets rule was not in compliance with pre-Amendment law and that the plaintiff was entitled to appropriate relief to remedy past violations; however, only three justices joined with him in that concurring opinion. The lower court acted as though this concurring opinion represented the majority opinion of the Court.

The majority of this Court did not explicitly decide the validity of the transfer rule with reference to pre-existing federal law, however, by implication, i.e., by not striking down the rule, the Court impliedly ruled in the defendants' favor. If they had not done so, there would have been no need for the concurring opinion of Justice Stevens. The entire thrust of the *per curiam* decision was to vacate and remand because the passage of the Boren-Long Amendment, Public Law No. 96-611, might affect the "future rights" of class members. The Boren-Long Amendment has no retroactive effect and nothing in the *per curiam* decision can even remotely be interpreted as a ruling that pre-existing federal law precluded California from utilizing a transfer of assets rule.

This interpretation is supported by the decision in *Dokos v. Miller* (N.D. Ill. 1981) 517 F.Supp. 1039. In that decision, the court recognized that this Court's decision in *Beltran* did *not* find California's pre-Amendment transfer of assets rule invalid. The court stated:

> "After reviewing the text of the Boren-Long Amendment (hereafter discussed) the [Supreme] Court did say 'it would appear that *in the future* the States will be permitted to impose transfer of assets restrictions generally similar to that in California' (emphasis added). *Plaintiffs might well argue the implication of that statement to be that pre-Amendment restrictions were impermissible. That conclusion cannot be sustained given the fact that Beltran did not adopt the position urged by four concurring justices: that the action should have been remanded with the express mandate that 'California's transfer of assets' rule . . . [be considered] prohibited by existing federal law.'* Thus *Beltran* simply sheds no light on the substantive issues raised in this action." (517 F.Supp. at 1042, fn. 3.) (Emphasis added.)

Therefore, absent the adoption by the *Beltran* Court of the position of the four concurring justices, there is no authority for the vacating of the district court's judgment of May 10, 1979. The district court was accordingly bound by the mandate of this Court to reconsider the validity of California's rule only with respect to federal law after the passage of the Boren-Long Amendment.

II

CALIFORNIA'S TRANSFER OF ASSETS RULE WHICH WAS IN EFFECT UP TO AND INCLUDING JUNE 30, 1981 DID NOT CONFLICT WITH ANY FEDERAL STATUTE OR REGULATION

Persons who comprise the class which includes the named respondent were all found to have transferred their assets for less than adequate consideration with the intent to qualify for assistance. (Welf. & Inst. Code § 14015.) All of them were found to have had sufficient assets that could have been used to support their medical needs. The purpose in implementing the transfer of assets rule was not so much to penalize these individuals. It was rather to preserve state funds for those persons who were truly in need of government-funded medical care. This Court recognized this aim when it said that restrictions on welfare eligibility attempt ". . . to promote self-reliance and civic responsibility, to assure that limited state welfare funds be spent on behalf of those genuinely incapacitated and most in need, and to cope with the fiscal hardships enveloping many states and local governments. . . ." (*New York Dept. of Social Services v. Dublino* (1973) 413 U.S. 405, 413.) These considerations would carry little weight in the face of explicit federal statutes or regulations prohibiting the state's imposition of a transfer of assets rule. However, no such statutes or regulations existed under pre-Amendment federal law.

Nowhere under federal law in either Title XIX of the Social Security Act or the regulations promulgated thereunder was there any mention of a prohibition against a transfer of assets rule. In fact, the only logical reading of those statutes and regulations is that a state could have imposed different income and resource eligibility criteria on the optional medically needy group than those imposed

on the categorically needy in order to promote the efficient administration of its Medicaid program.

The Court of Appeal, citing *Caldwell v. Blum* (2d Cir. 1980) 621 F.2d 491, *cert. den.*, 452 U.S. 909, found that California's transfer of assets rule violated the Supremacy Clause in that it conflicted with portions of the Social Security Act and applicable regulations. Specifically, it found that the rule conflicted with 42 United States Code sections 1396a(a)(10)(C), 1396a(a)(17)(B) and section 435.401(c) of the Code of Federal Regulations. However, neither the district court below nor the Court of Appeals for the Ninth Circuit (*Dawson v. Myers* (9th Cir. 1980) 622 F.2d 1304 vacated and remanded *sub. nom., Beltran v. Myers* (1981) 451 U.S. 625), found any conflict with these sections. The district court in Maryland (*Fabula v. Solomon* (D.Md. 1978) 463 F.Supp. 830, 832 *rev. sub. nom. Fabula v. Buck* (4th Cir. 1979) 598 F.2d 869) and the Supreme Court of Wisconsin (*Lerner v. Division of Family Services* (Wis. 1975) 235 N.W.2d 478) have agreed with petitioners' position.[3]

Medicaid has been described as an experiment in co-operative federalism with boundless options. (*Michael Reese Physicians and Surgeons, S.C. v. Quern* (7th Cir. 1979) 606 F.2d 732, 735.) States have considerable flexibility in the administration of their individual programs. (*Norman v. St. Clair* (5th Cir. 1980) 610 F.2d 1228, 1230.) This Court has recognized that states face the

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[3]Other cases have reached a contrary conclusion. (*Fabula v. Buck* (4th Cir. 1979) 598 F.2d 869; *Robinson v. Pratt* (D. Mass. 1980) 497 F.Supp. 116; *Caldwell v. Blum* (2d Cir. 1980) 621 F.2d 491, *cert. denied* (1981) 452 U.S. 909; *Scarpuzza v. Blum* (2d Dept. 1980) 426 N.Y.S.2d 505; *Blum v. Caldwell,* 100 S.Ct. 1635 (Marshall, J. in chambers, 1980.)

"critical problem of mounting welfare costs and the increasing financial dependency of many of its citizens." (*New York Dept. of Social Services v. Dublino*, 405 U.S. at 413.) The severity of these problems requires that states be given "considerable latitude in attempting their resolution." (*Ibid.*)

The starting point in any analysis involving the Supremacy Clause is the basic principle that the courts will not assume that a federal statute was intended to supersede the exercise of a valid state power unless clearly and unambiguously stated. In *Dublino, supra*, this Court held:

> "This Court has repeatedly refused to void statutory programs, absent congressional intent to pre-empt them.
>
> " 'If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed.' *Schwartz v. Texas*, 344 U.S. 199, 202-203 (1952)." (*Dublino*, 405 U.S. at 13.)

This principle becomes even more applicable under the Medicaid program, as Congress has expressly required state Medicaid programs to adopt certain procedures to curb abuses and has not prevented state welfare departments from instituting other reforms that would fall within their discretion in administering these programs. (*Michael Reese Physicians and Surgeons, S.C. v. Quern*, 606 F.2d at 735.)

Neither the statutes nor the regulation upon which the lower court relied specifically prohibited California's imposition of a transfer of assets rule under pre-

Amendment law. There is no provision in the Social Security Act which mandated that a state could use only eligibility requirements explicitly authorized by federal statute. There is no requirement that the eligibility rules for the optional medically needy group were required to be identical to those applied to the categorically needy.

First, section 1396a(a) (10) (C) of Title 42, United States Code, did not prohibit the application of the transfer of assets rule to the medically needy. That federal statute specifically excluded income and resource criteria from its requirement that the medically needy and categorically needy be treated alike. Since the transfer of assets rule could be properly characterized as a substantive financial eligibility rule which dealt with an individual's income and resources, it could be utilized in California's medically needy program during the period in question.

The transfer of assets rule also did not violate the "comparability" provisions of section 1396a(a) (10) (C). Congressional intent indicates that the requirement of comparability was meant to apply between the various groups of the medically needy—aged, blind and disabled. Its purpose was not to require "comparable" treatment between the categorically needy and medically needy. Even if section 1396a(a) (10) (C) is read to require comparability between the categorically needy and the medically needy, the financial eligibility standards as a whole were similar enough to be considered "comparable."

Second, the transfer of assets rule did not violate section 1396a(a) (17)—the requirement that only "available" income and resources be considered in making eligibility determinations under the Medicaid program. That section was meant to apply to a situation where income and resources were neither presently available, *nor had they ever been available*, to the applicant. It was not intended

to apply to a person who divested himself or herself of assets in order to qualify for medical assistance. (*Lerner v. Division of Family Services* (Wis. 1975) 235 N.W.2d 478, 483; *Rineferd v. Blum* (4th Dept. 1979) 412 N.Y.S.2d 526, 529.) Furthermore, federal regulations explicitly permitted states to consider assets and income not presently available in determining eligibility. (42 C.F.R., § § 435.831(a), 435.845(b).)

Third, section 435.401(c) of Title 42, Code of Federal Regulations (1980), did not prohibit application of the transfer of assets rule to the medically needy. Although that regulation provided that the requirements for determining eligibility for the medically needy cannot be more restrictive than those used for the categorically needy, it clearly was not meant to apply to *financial eligibility* conditions, such as the transfer of assets rule. To interpret that regulation to apply to financial eligibility conditions would result in an inconsistency, since the medically needy were, by definition, subject to different income and resource requirements. Furthermore, the prior wording of section 435.401(c), as well as the context in which section 435.401(c) appeared, indicated that it was meant to refer to the nonfinancial, general eligibility criteria, such as citizenship, alienage or residence.

California's pre-Amendment transfer of assets rule was also necessary to effectuate the purposes of the Medicaid program. (*Lavine v. Milne* (1976) 424 U.S. 577, 584-585.) It preserved finite state resources for those who were truly in need of medical assistance. It also prevented the type of fraud and abuse which, if left unchecked, would have rapidly depleted the limited funds available for medical assistance. (*Rineferd v. Blum* (4th Dept. 1979) 412 N.Y.S.2d 526, 529; *Lerner v. Division of Family Services* (Wis. 1975) 235 N.W.2d 478, 485.) Without such a rule, an individual could bring himself within the

Medi-Cal eligibility requirements by a simple paper transfer of assets to a friend or relative. The antifraud provisions of section 1396h(a) of Title 42, United States Code, were of no assistance to states as they did not cover the situation where individuals intentionally divested themselves of assets in order to manufacture eligibility.

The transfer of assets rule was also essential to the proper functioning of the spend-down requirement contained in section 1396a(a)(17) of Title 42, United States Code, and implemented in California as its "share of cost" provisions (22 Cal. Admin. Code § 50651 *et seq.*). The "share of cost" rules required an individual to devote excess income to the cost of medical care. The intentional divestment of assets would have rendered these federally-required provisions ineffective.

III

THE IMMUNITY PROVIDED BY THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BARS RETROACTIVE PAYMENT OF BENEFITS

The Eleventh Amendment provides:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

It is well-established that even though a state is not named as a party to the action suit may be barred by the Eleventh Amendment. (*Ford Motor Co. v. Department of Treasury* (1945) 323 U.S. 459, 464.) Moreover, a suit against a state official which involves the retroactive payment of state funds may also be prohibited under the Amendment. (*Edelman v. Jordan* (1973) 415 U.S. 651, 655, citing

with approval the reasoning in *Rothstein v. Wyman* (2nd Cir. 1972) 467 F.2d 227.) Furthermore, it is also clear the Eleventh Amendment applies to injunctive relief, not merely a suit for a money judgment. (*Cory v. White* (1982) _____ U.S. _____, 102 S.Ct. 2329.)

In *Edelman v. Jordan* (1973) 415 U.S. 651, a class action for injunctive and declaratory relief was brought against Illinois officials administering a federal-state welfare program for violation of time limits under federal law for the processing and payment of benefits. A permanent injunction was entered which ordered state officials to provide benefits wrongfully withheld to all persons found eligible who had applied between July 1, 1968, the date of the federal regulation, and April 16, 1971, the date of the court's preliminary injunction. This Court, in reversing the Court of Appeals, held that the Eleventh Amendment barred this type of award of retroactive benefits.

In the instant case, plaintiff class consists of all those aged, blind, and disabled individuals who, as of June 19, 1978, when the lawsuit was commenced, were denied Medi-Cal benefits because of California's transfer of assets rule. California has applied this rule to applications for medical assistance for several years prior to June 30, 1981, the effective date of the Boren-Long Amendment in the Medicaid program. A permanent injunction was entered on February 8, 1982 which requires defendants to provide benefits wrongfully withheld to all persons who were denied Medi-Cal benefits as of June 19, 1978. Specifically, defendants were ordered to notify class members or their estates of their right to a redetermination of eligibility for benefits and, that if otherwise eligible, "be found eligible *retroactively* without regard to any previous transfer of assets." (Emphasis added.) The order also permits class members "to present evidence. . .[of their]

incurred expenses (whether paid or not), which, except for application of the transfer of assets rule, would have been paid for under the Medi-Cal program. . . . and to provide reimbursement for those . . . bills which have been paid and to pay the providers for those bills which remain unpaid. . . ." A plain reading of this notice requires the payment of retroactive benefits to class members who were denied eligibility years before the lawsuit was commenced or to their estates and to providers of health care for services rendered long ago. It is noteworthy that in all likelihood estates of the class members would be comprised of the gratuitous transferees of the assets.

In summary, the district court's order flies in the face of the immunity provided by the Eleventh Amendment and this Court's reasoning in *Edelman v. Jordan* (1973) 415 U.S. 651.[4] Of course, this order will ultimately cause the greatest hardship to the truly needy beneficiaries of California's medical assistance program because retroactive payment of benefit will invariably mean that there is less money available for their present medical needs. (*Id*, at 666, fn. 11.)

IV

THE DISTRICT COURT ABUSED ITS DISCRETION IN REQUIRING INDIVIDUAL NOTIFICATION TO CLASS MEMBERS

This Court has determined that a district court is not free under its equity jurisdiction to fashion injunctive relief which frustrates the public interest (*Porter v. Warner Holding Company* (1946) 328 U.S. 395, 398), and violates the immunity provided by the Eleventh Amendment. (*Quern v. Jordan* (1979) 440 U.S. 332.)

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[4]It should be noted that defendants raised the issue of retroactive payment of benefits, particularly to the estates of deceased class members and providers of health care services before the Court of Appeals. However, the Court failed to address the question in its opinion.

This Court has recognized in *Quern v. Jordan* (1979) 440 U.S. 332, that the costs associated with notice to class members must not run afoul of the immunity provided by the Eleventh Amendment. In that case, state officials did not make an issue of the administrative expense connected with preparing and mailing individual notices. Furthermore, this Court noted that in *Jordan v. Trainor* (N.D.Ill. 1975) 405 F.Supp. 802, one of the case decisions under consideration, that prior to ordering notice to individual members, the district court requested the parties to submit information with respect to the number of persons in the plaintiff class, the cost of notifying them, the amounts involved and other issues affecting the equities of sending notice. The state officials, however, submitted no response to this request and did not dispute the fact there would be additional costs incurred in notifying class members.

In another case involving transfer of assets, (*Owens v. Roberts* (M.D.Fla. 1974) 377 F.Supp. 45, 60-61) it was found that it was not in the public interest to require the state to individually notify class members of their eligibility for benefits. In making this determination, the court considered several factors:

> ". . . (1) the costs estimated by the state ($600,000.00) in searching approximately 250,000 records, (2) the relatively few recipients to be affected by the search (approximately 134 persons), (3) the alternative means employed in notifying the members of the affected class of their rights under SSI by advertising, etc., (4) the diminution in benefits to other welfare recipients because of the expenditure of these costs, and (5) the lack of bad faith on the part of the welfare officials." (*Owens, supra,* p. 61.)

In the instant case, the costs estimated by the state in manually searching millions of files is $2,341,935. It is clear that only a small percentage of the class members will be found eligible for benefits. Furthermore, alternative means of notifying members of the class have been successfully employed. The respondents have already notified government offices, providers of health care services and the media, including the newspapers, television and radio. Finally, other welfare recipients will suffer because of the administrative burden and expenditure of costs connected with the requirement of individual notification. In summary, the district court abused its discretion because individual notification frustrates the public interest and violates the Eleventh Amendment.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

JOHN K. VAN DE KAMP, Attorney General
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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTONIA BELTRAN, et al. Plaintiffs-Appellees, v. BEVERLEE A. MYERS, individually and in her capacity as Director of the California State Department of Health; and ELIZABETH LYMAN, individually and in her official capacity as Deputy Director of the California State Department of Health, Defendants-Appellants.	No. 82-5207 D.C. No. 78-2350 CBM OPINION

Appeal from the United States District Court
for the Central District of California

Honorable Consuelo B. Marshall, District Judge, Presiding

Argued and Submitted November 2, 1982

Before: FLETCHER, NELSON, and REINHARDT, Circuit Judges.

PER CURIAM:

This is an appeal from a judgment of the district court that California's "transfer of assets" rule as it applied to "medically needy" applicants for Medicaid benefits prior to July, 1981, was in conflict with federal Social Security (Medicaid) laws. We affirm.

FACTS AND PROCEDURAL CONTEXT

In 1965, Congress established the Medicaid program under Title XIX of the Social Security Act (42 U.S.C. §§ 1396-1396k (1976)) as a cooperative federal-state program to provide medical assistance to the needy. To be eligible for federal financial assistance, participating states must administer their programs in accordance with federal guidelines. 42 U.S.C. § 1396a (1976). California provides Medicaid benefits (Medi-Cal in California) automatically to the categorically needy, those who receive cash welfare payments under Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) programs. *See* 42 U.S.C. § 1396a(a) (10) (A) (1976). California also has elected to provide benefits to the medically needy, those whose income and resources are sufficient to meet their needs apart from medical expenses. The medically needy become eligible for assistance when they incur medical expenses which reduce their income and assets below established levels. 42 U.S.C. § 1396a(a) (10) (C) (1976); 42 C.F.R. § 435.4, .301 (1980).

In 1965, California adopted Welfare and Institutions Code section 14015, referred to as "the transfer of assets rule." The rule created a rebuttable presumption that any transfer of assets by medically needy applicants for less than adequate consideration within two years prior to their applying for benefits was made with the intent to qualify for assistance. Applicants who failed to rebut this presumption were disqualified for specified periods from receiving medical assistance. No such rule applied to the categorically needy.

Appellees constitute the class of aged, blind, and disabled medically needy individuals who as of June 19, 1978, were denied Medicaid benefits under California's transfer of assets rule. Plaintiffs' complaint alleged that the transfer of assets rule was inconsistent with applicable

portions of the Social Security Act and therefore violated the supremacy clause, and further that the rule violated the equal protection and due process clauses of the fourteenth amendment. The district court granted defendant's motion for summary judgment, finding that the rule violated neither the supremacy clause nor the fourteenth amendment. On appeal, this court affirmed, *Dawson v. Myers*, 622 F.2d 1304 (9th Cir. 1980).

On December 28, 1980, the Boren-Long Amendment (Pub. L. 96-611 § 5, 94 Stat. 3567) was signed into law amending section 1613 of the Social Security Act, 42 U.S.C. § 1382b. The amendment, effective March 1, 1981, permits states to deny SSI assistance to individuals who are eligible only because they have disposed of resources for less than fair market value. Pub. L. No. 96-611, § 5, 94 Stat. 3567-68 (1980), *to be codified at* 42 U.S.C. §§ 1382b(c), 1396a(j). The states may apply similar rules to Medicaid recipients in both the categorically needy and medically needy programs. Pub. L. 96-611 § 5(b), 94 Stat. 3568 (1980) (amending section 1902 of the Social Security Act, 42 U.S.C. § 1396a).

The Supreme Court granted certiorari on the sole issue of the supremacy clause violations. In its *per curiam* decision, the Supreme Court vacated our earlier decision and remanded the case for our reconsideration in light of the recent statutory change. *Beltran v. Myers*[1] 451 U.S. 625, 101 S.Ct. 1961, 68 L.Ed.2d 495 (1981). Four members of the Court, in a concurrence authored by Justice Stevens, agreed that the then existing federal law prohibited the transfer of assets rule and that this court on

1. Dawson originally brought suit in the district court on behalf of herself and others similarly situated; Beltran was permitted to intervene. After an appeal was taken by Dawson to the United States Court of Appeals for the Ninth Circuit, she died; the Supreme Court heard the case under the name of Beltran v. Myers.

remand should determine appropriate relief for past violations. *Id.* at 629. This court remanded the case to the district court with instructions that it determine the impact of the Boren-Long Amendment on the parties' rights and to make the necessary modifications in its original judgment.

The district court entered an order vacating its earlier judgment and issuing findings of fact and conclusions of law. The court concluded that California's transfer of assets rule violated the Medicaid comparability requirement of 42 U.S.C. § 1396a(a)(10)(C)(i), (17)(1976), and 42 C.F.R. §435.401(c)(1980); and was thus invalid under existing law. The court ordered defendants to identify and notify individual class members of their right to seek reimbursement through state channels.

ISSUES ON APPEAL

Appellants raise three major issues on appeal:

1. Did the district court have jurisdiction on remand to vacate its earlier judgment and decide issues not previously decided?

2. Did the California transfer of assets rule, in effect up to and including June 30, 1981, conflict with federal Medicaid statutes?

3. Did the court abuse its discretion in requiring individual notice to class members?

I
Jurisdiction of the District Court

Lower courts are free to decide issues on remand so long as they were not decided on a prior appeal. *Quern v. Jordan,* 440 U.S. 332, 347 n.18, 99 S.Ct. 1139, 1148 n.18, 59 L.Ed.2d 358, 370 n.18 (1979); *Liberty Mutual Insurance Co. v. E.E.O.C.,* 691 F.2d 438, 441 (9th Cir. 1982); 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* §4478, at 793 (1981). Any issue

not expressly or impliedly disposed of on appeal is left open for the trial court's reconsideration on remand. *Liberty Mutual,* 691 F.2d at 441; 18 C. Wright, A. Miller & E. Cooper, *supra,* §4478, at 789.

In this case, the Supreme Court's *per curiam* decision did not reach the merits of the validity of California's pre-amendment transfer of assets rule. Justice Stevens, in his concurrence, in which three others joined, thought that the rule was prohibited, but the majority declined to reach this issue. *See Dokos v. Miller,* 517 F.Supp. 1039 (N.D. Ill. 1981), where the court invalidated Illinois' pre-July 1981 transfer rule, noting that "*Beltran* simply sheds no light on the substantive issues raised in this action." *Dokos,* 517 F.Supp. at 1042 n.3. Therefore, the issue was not foreclosed from reconsideration on remand.

II

The California pre-Amendment Transfer of Assets Rule

On finding that the lower court had authority under our order to reach new conclusions of law, we now examine the correctness of those conclusions under a *de novo* standard of review. *See United States v. Rosales,* 584 F.2d 870, 872 (9th Cir. 1978).

California's transfer of assets rule is properly characterized as a substantive eligibility requirement. It directly applies to the state's determination of whether an applicant's assets exceed the eligibility requirements. The transfer of assets rule applied only to medically needy applicants; a categorically needy applicant could become eligible for Medicaid benefits by disposing of excess assets. 42 U.S.C. §1382b(b) (1976); 42 C.F.R. §435.120(b) (1980); *Social Security Administration's Claims Manual,* §12507(a). The district court concluded that the Social Security Act and agency regulations prohibited the state from imposing more restrictive eligibility requirements on the medically needy than on the categorically

needy. 42 U.S.C. §1396a(a)(10)(C)(i),[2] (17)(1976);[3] 42 C.F.R. §435.401(c)(1980).[4]

The Courts of Appeals for the Second and Fourth Circuits have taken the position that disqualification from Medicaid by reason of a prior transfer of assets violates the comparability provision of 42 U.S.C. §1396a(a)(10)(C) (1976) and the attendant regulation, 42 C.F.R. §435.401(c) (1979). *Caldwell v. Blum,* 621 F.2d 491 (2d Cir. 1980), *cert. denied,* 452 U.S. 909, ____ S.Ct.____, ____ L.Ed.2d ____ (1981); *Fabula v. Buck,* 598 F.2d 869 (4th Cir. 1979); *accord, Robinson v. Pratt,* 497 F. Supp. 116 (D. Mass. 1980); *Buckner v. Maher,* 424 F. Supp. 366 (D. Conn. 1976) (three-judge panel), *aff'd* 434 U.S. 898, 98 S.Ct. 290, 54 L.Ed.2d 184 (1977).

2. Section 1396 (a)(10)(C)(i) during the relevant period required states that had chosen to include the medically needy in their Medicaid plans to:

> Mak[e] medical assistance available to all individuals who would, except for income and resources, be eligible for . . . supplemental security income [SSI] benefits . . . and who have sufficient . . . income and resources to meet the costs of necessary medical and remedial care and services.

3. Under Section 1396a(a)(17), a state plan must:

> include reasonable standards (which shall be comparable for all groups . . .) for determining eligibility for and the extent of medical assistance under the plan . . . .

4. 42 C.F.R. §435.401 (1980) provided in pertinent part:

> (c) [A Medicaid agency] must not use requirements for determining eligibility for optional coverage groups that are —
>
> . . .
>
> (a) for aged, blind, and disabled individuals more restrictive that those used under SSI.

We adopt the reasoning of *Caldwell v. Blum* and hold that California's transfer of assets rule conflicts with the comparability requirement of section 1396a(a)(10)(C) (1976).

III
Individual Notice to Class Members

Appellants urge that the district court abused its discretion when it ordered appellants to identify and notify individual class members of their right to seek reimbursement through existing state administrative procedures. The standard by which this court examines relief ordered by the district court under its equity jurisdiction, as in this case, is whether that court abused its discretion. *See United States v. Coca-Cola Bottling Co. of Los Angeles,* 575 F.2d 222 (9th Cir.), *cert. denied,* 439 U.S. 959, 99 S.Ct. 362, ____ L.Ed.2d ____ (1978). It was within the court's discretion, after considering the issues of cost and administrative burden raised by the state, to conclude that individual notice was the method best calculated to reach this class of aged, blind, and disabled persons. The notice required falls within the guidelines of *Quern v. Jordan,* 440 U.S. 332, 348-49, 99 S.Ct. 1139, 1149, 59 L.Ed.2d 358, 371-72 (1979).

CONCLUSION

For the reasons stated above, the order of the district court is

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTONIA BELTRAN, et al.,
Plaintiff,

vs.

BEVERLEE A. MYERS, et al.,
Defendants.

NO. 78-2350 CBM(Mx)

FINDINGS OF FACT and CONCLUSIONS OF LAW

FINDINGS OF FACT

1. This case is before the district court as a result of a remand from the Supreme Court to the Court of Appeals on May 18, 1981, *Beltran v. Myers*, 101 S.Ct. 1961, and from the Court of Appeals to this court on June 25, 1981. The mandate of the Court of Appeals was issued on June 30, 1981.

2. On May 10, 1979, the district court granted plaintiff's Motion for Class Certification. The case has continued as a class action throughout its progress through the Court of Appeals and the Supreme Court. The remaining class representative is Antonia Beltran.

3. On May 10, 1979, the district court denied plaintiff's motion for summary judgment and granted defendants' motion for summary judgment. The court signed Findings of Fact and Conclusions of Law on that same date.

4. The relevant Findings of Fact signed that date are numbers 3 through 6. They are herein incorporated by reference.

5. To the extent that any of the following Conclusions of Law are deemed Findings of Fact, they are incorporated herein by reference.

CONCLUSIONS OF LAW

1. The court continues to have jurisdiction over this case pursuant to 28 U.S.C. §1343(3), (4) and 28 U.S.C. §1331.

2. California participates in the cooperative scheme of federalism established under the Medicaid statute, section 1902 of the Social Security Act, 42 U.S.C. §1396 *et seq.*

3. Under this scheme, the state is reimbursed 50% of the costs of its Medicaid program (known in California as "Medi-Cal"). 42 U.S.C. §1396b; 44 Fed.Reg. 10554 (1979).

4. For its part, the state is required to comply with federal law. *Harris v. McRae*, 100 S.Ct. 2671, 2680; *Schweiker v. Gray Panthers*, 49 U.S.L.W. 4792, 4793 (1981).

5. Under the Medicaid scheme, a state must provide assistance to the so-called categorically needy, who are individuals meeting both the categorical requirements of age, blindness, disability, or childhood dependence, and also the financial eligibility requirements of the applicable cash assistance program, either Supplemental Security Income (SSI) or Aid to Families with Dependent Children

(AFDC). 42 U.S.C. §1396a(a) (10) (A), 42 C.F.R. §§435.4, 435.120; see *Beltran v. Myers*, 101 S.Ct. 1961, 1962 n.3 (1981).

6. A state can, at its option, provide assistance to the so-called medically needy, who satisfy the categorical requirements but not the financial eligibility requirements of the case assistance program. They become eligible for assistance when they spend down their income to the established levels of assistance. 42 U.S.C. §1396a(a) (10) (C); 42 C.F.R. §§435.4, 435.301; see *Beltran*, 101 S.Ct., at 1962 n.1.

7. California has opted to provide assistance to the medically needy. Cal. Welf. § Inst. C. §§14005.7, 14051; 22 Cal.Admin.C. §50203; see *Beltran*, 101 S.Ct., at 1962.

8. For all applications for assistance as medically needy filed through June 30, 1981, California imposed a transfer of assets rule. Welf. & Inst. C. §14015; 22 Cal.Admin.C. §§50408-50411.

9. Pursuant to the transfer rule, an applicant could be denied Medi-Cal for a period of time based on a formula set out in 22 Cal.Admin.C. if he or she had transferred property for less than full consideration and was not able to overcome a presumption that the transfer was for the purpose of obtaining eligibility.

10. The state did not impose such a rule on categorically needy applicants.

11. On July 1, 1981, a new federal law went into effect which permits states to apply transfer rules, with specific limitations, to both their categorically and medically needy applicants. 42 U.S.C. §1382b; see *Beltran*, 101 S.Ct., 1962-1963.

12. Prior to the effective date of 42 U.S.C. §1382b, federal law did not permit states to apply a transfer rule.

13. Pursuant to statutory directive, 42 U.S.C. §1382b(b), the Secretary of Health and Human Services promulgated a Social Security Administration rule that the transfer of an asset prior to application for SSI benefits would not affect eligibility for SSI. Claims Manual, §12507(a). Since a state had to provide Medicaid to a recipient of SSI (that is, to a categorically needy individual), the states could not apply transfer rules to the categorically needy. 42 U.S.C. §1396a(a) (10) (A).

14. The Medicaid statute forbids a state from treating the medically needy more restrictively than the categorically needy. 42 U.S.C. §§1396a(a) (10) (C) (i), 1376a(a) (17); 42 C.F.R. §435.401(c).

15. This "comparability" requirement is applicable to a transfer rule, which is a substantive condition of eligibility.

16. Defendant Myers was specifically informed by letter dated September 29, 1979 from the HEW official responsible for California's HEW region, that the state transfer rule violated federal law. The determination of the responsible federal agency is entitled to considerable deference. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381 (1969); *Brubaker v. Morton*, 500 F.2d 200 (9th Cir. 1974). This court is satisfied that that is the correct interpretation.

17. All outstanding court decisions agree with this interpretation of the Medicaid statute. *Caldwell v. Blum*, CCH Medicare & Medicaid Guide, ¶30,093 (N.D.N.Y. 1979), aff'd 621 F.2d 491 (2d Cir. 1980), cert. denied 49 U.S.L.W. 3894 (June 1, 1981); *Fabula v. Buck*, 598 F.2d 869 (4th Cir. 1979), rev'g 463 F.Supp. 830 (D.Md. 1978); *Robinson v. Pratt*, 497 F.Supp. 116 (D.Mass. 1980), appeal dis'd No. 80-1750 (1st Cir., March 24, 1981); see also *Blum v. Caldwell*, 100 S.Ct. 1635

(Marshall, J., in chambers, 1980). Moreover, the four Supreme Court Justices who considered the propriety of California's transfer rule under the pre-July, 1981 federal law explicitly stated that it was "prohibited by existing federal law ...[f]or the reasons stated by the United States Court of Appeals for the Second Circuit in *Caldwell*...." *Beltran*, 101 S.Ct., at 1963-1964, Stevens, J., concurring).

18. Case authority and the interpretation of the responsible federal agency overwhelmingly indicate that the California transfer rule was prohibited by the federal law in effect through June 30, 1981.

19. In its remand to this court, the Court of appeals stated that this court should, *inter alia*, "make such modifications in its original judgment as are necessary". Pursuant to that directive, and in light of the federal prohibition against this transfer rule which existed prior to July 1, 1981, the judgment in favor of defendants dated May 10, 1979 shall be vacated, and a new judgment in favor of plaintiff entered.

20. Relief to class members denied eligibility as a result of the invalid state transfer rule must be limited to notification of their rights to seek reimbursement through state channels. *Edelman v. Jordan*, 415 U.S. 651 (1974); *Quern v. Jordan*, 440 U.S. 332 (1979); see *Beltran*, 101 S.Ct., at 1964 (Stevens, J., concurring). The most effective method of relief is individual notice to class members. See *Quern, supra*; see also, e.g., *Markel v. Blum*, 509 F.Supp. 942, 952 (N.D.N.Y. 1981); *Herweg v. Ray*, 481 F.Supp. 914, 917-918 (S.D.Iowa 1978). In light of the age and infirmities of many members of the plaintiff class, individual notice is necessary in order to guarantee that as many as possible will have the opportunity to seek and obtain reimbursement for the costs which they have incurred as a result of the illegal state policy. In addition to

individual notices in English and Spanish, notification should also be provided by more general methods.

21. Plaintiffs have now prevailed on that aspect of the case involving the federal law as in effect through June 30, 1981. Since this case has been in litigation for over three years, plaintiffs are entitled to interim costs for those expenses incurred to date. An incident of those costs are attorneys fees pursuant to 42 U.S.C. §1988. *Hutto v. Finney*, 437 U.S. 678,695 (1978). Plaintiff will be ordered to file a memorandum and declarations of her attorneys setting out attorneys' time spent on this case to date and the amount that they seek.

22. To the extent that any of the foregoing Findings of Fact are deemed Conclusions of Law, they are incorporated herein by reference.

23. Plaintiff's motion is granted. The judgment of May 10, 1979, is vacated, and judgment shall be entered in plaintiff's favor. An order will issue accordingly.

DATED: 2/3/82

C. B. Marshall

CONSUELO B. MARSHALL, Judge
United States District Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTONIA BELTRAN, et al.,
Plaintiff,
vs.
BEVERLEE A. MYERS, et al.,
Defendants.

No. 78-2350 CBM(Mx)

ORDER

A motion having been made by plaintiff herein to vacate the judgment of this court dated May 10, 1979, and to enter a judgment that the California transfer rule violates federal law and to provide relief,

NOW, on considering the complaints, affidavits, exhibits, discovery and supporting briefs filed herein, and after hearing counsel for the parties, and due deliberation having been made,

IT IS HEREBY ORDERED:

1. That plaintiff's motion is granted and the order of this Court dated May 10, 1979 granting summary judgment to defendants is vacated;

2. That defendants' policies that were in effect on or before June 30, 1981 which applied a transfer of assets rule to individuals seeking Medi-Cal benefits, pursuant to Welf. & Inst. C. §14015 and Title 22 of the California Administrative Code, is hereby declared to have been invalid as violative of federal law and therefore of the Supremacy Clause;

3. That defendants, their successors in office, agents, employees, and all persons acting in concert with them, are permanently enjoined from denying Medi-Cal benefits to plaintiff Beltran and all members of the class who were denied Medi-Cal at any stage of the state administrative process due to the transfer of assets rule embodied in Welf. § Inst. C §14015 and Title 22 of the California Administrative Code, as the result of an application filed on or before June 30, 1981;

4. That defendants, their successors in office, agents, employees, and all persons acting in concert with them, are ordered to provide plaintiff Beltran, or authorized representative, the opportunity to present evidence to the appropriate state or county office responsible for the determination of Medi-Cal eligibility, on her incurred expenses (whether paid or not), which, except for application of the transfer of assets rule, would have been paid for under the Medi-Cal program, to provide her access to the state administrative process if there are disputes as to whether and how much she should be paid, and to provide reimbursement for those of plaintiff's bills which have been paid and to pay the providers for those bills which remain unpaid, in accordance with the decisions reached by defendants, their agents, or employees, as to the amounts owed;

5. That defendants, their successors in office, agents, employees, and all persons acting in concert with them, are ordered to notify individually all members of the class,

or their estates, who were denied at any stage of the state administrative process as the result of an application filed on or before June 30, 1981, by sending via first class mail the notification attached hereto as Exhibit "A", and its Spanish translation, that their previously determined eligibility for Medi-Cal due to transfer of property without adequate consideration should be re-evaluated in light of this court's determination that the state rule violated federal law, and that if they are otherwise eligible:

(a) they may be found elibible retroactively without regard to any previous transfer of assets; and,

(b) that they may request and receive reimbursement for those costs which have been incurred in the same manner and to the same degree as is permitted of the named plaintiff in accordance with paragraph 4 above.

6. That defendants shall send the notification described in paragraph 5 within 120 days of the date of this Order, and shall file with the court, within 30 days of the mailing of the notices, a certificate setting forth the names and addresses of all persons and estates so notified;

7. That, in addition to sending of individual notices, defendants shall, within 60 days of this Order, notify every hospital in the State of California, and every nursing home or other medical or treatment facility in the State of California which has a provider agreement with the State, of the court's decision and of the right of individuals previously denied Medi-Cal pursuant to the transfer rule to re-apply for Medi-Cal in the same manner as is set out in the individual notices;

8. That defendants shall, within 60 days of the date of this Order, cause a Notice to be published in newspapers

of general circulation throughout California at least once a week for a four-week period beginning two weeks after the date of this Order. The English version of the Notice shall be as set out in Exhibit "B" to this Order. Defendants shall translate it in Spanish, and where appropriate, shall print either or both versions. Defendants shall file with this court a certification of the newspapers in which the Notice was published and the dates of publication within two weeks after the final Notice appears.

9. That, when feasible, defendants shall cause to be broadcast public service announcements in both English and Spanish, on television and radio stations during the four-week period that begins two weeks after the date of this Order. These announcements shall provide appropriate information, including, but not limited to, the court's determination that the transfer rule was improper, that individuals denied may be entitled to retroactive coverage, and the nature of the steps which they should take to re-apply for benefits. Defendants shall file a certification with the court within two weeks after the final announcement is broadcast describing the nature of the broadcast, and when and over what stations the broadcasts were made.

10. Defendants shall cause to be printed and distributed posters which explain, in English and Spanish, the nature of the court's decision and the right of individuals to seek retroactive coverage. These notices are to be displayed prominently in Medi-Cal offices, County welfare offices, and in any other offices in which potentially eligible claimants might seek them. Defendants should endeavor to have the Social Security Administration agree to display these notices as well. The exact wording of these notices should be determined by agreement of the parties, with the court's approval required if the parties are unable to agree. Within two weeks of the date of the order

in this case, defendants shall provide plaintiff's attorneys with a proposed draft of these notices.

11. Costs incurred to date shall be taxed by the clerk in favor of plaintiffs and against defendants. Attorneys' fees shall be awarded as an element of costs pursuant to 42 U.S.C. §1988. Plaintiff shall file declarations of attorneys regarding their time spent and a memorandum discussing the amount of attorneys' fees to be awarded within 14 days of this Order. Defendants shall have seven days after service of the declaration and memorandum to file objections to the amount proposed.

DATED: 2/2/82

C. B. Marshall

CONSUELO B. MARSHALL, JUDGE
UNITED STATES DISTRICT COURT

IMPORTANT NOTICE

YOU MAY BE ELIGIBLE TO BE REIMBURSED FOR MEDICAL COSTS THAT WERE PAID OR ARE OWED FOR NECESSARY HEALTH CARE WHICH SHOULD HAVE BEEN PAID FOR BY MEDI-CAL.

California has a rule – known as a "transfer of assets" rule – by which state officials have denied Medi-Cal eligibility to people who transfered or gave away property before applying for Medi-Cal. Our records indicate that you may be one of those people.

A federal court in Los Angeles has recently declared that state rule invalid. THE COURT ORDERED THE STATE TO NOTIFY PEOPLE WHO WERE DENIED ELIGIBILITY IN THE PAST BECAUSE OF THIS RULE THAT THEY MAY BE ABLE TO RECOVER AMOUNTS WHICH WERE SPENT OR OWED IN THE PAST which the Medi-Cal program should have been paying for. If you have ever been denied Medi-Cal because you transferred, sold, or gave away property to someone else, there are steps you can take which could lead to your recovering for the bills you incurred during the period when the state said you were ineligible for Medi-Cal. You could be eligible to recover these past amounts *even if you are now eligible for and receiving Medi-Cal.*

In accordance with the court's order, the Department of Health Services is obligated to redetermine whether you would have been eligible for Medi-Cal if the state had not been using the "transfer of assets" rule. In order to determine what amount,

if any, you (or your doctor, pharmacist, nursing home, etc.) is entitled to, you should contact your local Medi-Cal district office and arrange for a new determination of your past eligibility. You or your representative should be prepared to bring any records which would indicate the nature and amount of medical expenses which you, your relatives, or friends may have incurred as a result of the state previously denying your application.

If you are dissatisfied with the new determination, either because the state says that you were still ineligible for that period or because the state decides to repay you less than the amount you think is right, you will have an opportunity to seek a fair hearing and to otherwise contest the state's decision, just as you would in any other situation where the state decides against you.

Although you are under no obligation to take any action in response to this letter, *it is your benefit to do so*. You may be eligible to be reimbursed for bills you have already paid, or to have outstanding bills paid for under Medi-Cal.

If you have any questions about this letter and the procedure it discusses, you should contact your attorney, or your nearest legal aid or legal assistance for the elderly office, or your local County Welfare office. You can also contact your local Medi-Cal office if you want to ask about the situation.

BEVERLEE A. MYERS, DIRECTOR
CALIFORNIA DEPARTMENT OF
HEALTH SERVICES.

[NEWSPAPER NOTICE]

NOTICE TO MEDI-CAL APPLICANTS AND RECIPIENTS

The federal court in Los Angeles ruled recently that California's "transfer of assets" rule is invalid because it conflicts with federal law. The rule allowed state officials to deny Medi-Cal coverage to aged, blind, and disabled applicants who transferred, gave away, or sold property prior to applying for Medi-Cal benefits.

The court's order requires the state to notify people who were previously denied eligibility of their right to seek reimbursement for bills incurred – whether since paid or not – which would otherwise have been covered by Medi-Cal. Anyone who thinks they fit into this category should contact their local Medi-Cal office and file a new application for the period in which they were found ineligible. If dissatisfied with the state's determination, the applicants will have a right to appeal the decision through the state's administrative process. But no reimbursement for incurred bills can be made unless an application is filed.

Questions about the court's ruling and the procedure outlined above should be directed to an attorney, to a legal aid or legal assistance for the elderly office, or to an office of the California Department of Aging.

EXHIBIT "B"

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANTONIA BELTRAN, et al., Plaintiff, v. BEVERLEE A. MYERS, et al., Defendants.	No. 78-2350 CBM(Mx) FINAL JUDGMENT PURSUANT TO RULE 54 (b)

This is to certify, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that the undersigned hereby directs the entry of a final judgment upon all parts, except paragraph 11 (relating to costs and attorneys fees) of the order filed February 4, 1982 and entered February 8, 1982, which vacated the previous judgment of this Court entered May 10, 1979, entered a new judgment, and provided for certain relief. Although the court has determined that it is proper to award costs and attorneys fees to plaintiffs, the amount of those costs and fees has yet to be determined, and the entire issue of fees and costs is more properly dealt with separately. The undersigned expressly determines, however, that there is no just reason for delay on the other issues decided in the February 8, 1982 order and expressly directs the entry of such judgment.

IT IS THEREFORE ORDERED that final judgment, incorporating the order entered February 8, 1982, except for paragraph 11, is hereby entered in favor of plaintiffs.

DATED: 3/3, 1982.

CONSUELO B. MARSHALL, JUDGE
United States District Court

OF ATTORNEY(S)
DUDOVITZ, JANIEWSKI, DER
National Senior Citizens Law Center
1636 W. 8th St., #201
Los Angeles, CA 90017 (213) 388-1381
ATTORNEY(S) FOR
Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTONIA BELTRAN, et al., PLAINTIFF(S) VS BEVERLEE A. MYERS, et al., DEFENDANT(S)	CASE NUMBER CV 78-2350 CBM(Mx) PROOF OF SERVICE / ACKNOWLEDGMENT OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of LOS ANGELES, State of California, and not a party to the above-entitled cause. On March 2, 1982, I served a true copy of FINAL JUDGMENT PURSUANT TO RULE 54(b) ( ) by personally delivering it to the person(s) indicated below in the manner as provided in FRCivP 5(b); (XX) by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following: *(list names and addresses for person(s) served. Attach sheets if necessary.)*

RICHARD MAGASIN
DONALD ROBINSON
Deputy Attorneys General
Tishman Bldg.
3580 Wilshire Blvd.
Los Angeles, CA 90010

Place of Mailing: Los Angeles, CA
Executed on March 2, 1982 at Los Angeles, California

(OVER)

During the relevant period the statutes and regulations provided as follows:

1. Title 42, United States Code, sections 1396a(a) (10) (C); 1396a(a) (17) (B):

> "A State plan for medical assistance must (10) provide -
>
> (C) if medical assistance is included for any group of individuals who are not described in clause (A) and who do not meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case may be, as determined in accordance with standards prescribed by the Secretary -
>
> (i) for making medical assistance available to all individuals who would, except for income and resources, be eligible for aid or assistance under any such State plan or to have paid with respect to them supplemental security income benefits under subchapter XVI of this chapter, and who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical and remedial care and services, and
>
> (ii) that the medical assistance made available to all individuals not described in clause (A) shall be equal in amount, duration, and scope. . . ."

[and]

> "(17) include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary,

differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which . . . (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits. . . ."

2. California Welfare & Institutions Code, section 14015:

"The providing of health care under this chapter shall not impose any limitation or restriction upon the person's right to sell, exchange or change the form of property holdings nor shall the care provided constitute any encumbrance on the holdings. However, any

transfer of the holdings by gift or, knowingly, without adequate and reasonable consideration, shall be presumed to constitute a gift of property with intent to qualify for assistance and such act shall disqualify the owner for further aid for a period determined under standards established by the director, and in no event for less than half of the period that the capital value of the transferred property would have supplied the person's maintenance needs based on his circumstances at the time of his transfer plus the cost of any needed medical care."

3. Title 42, Code of Federal Regulations, 435.401(c) (2):

"(c) The agency must not use requirements for determining eligibility for optional coverage groups that are -

> . . . (2) For aged, blind and disabled individuals, more restrictive than those used under SSI, except for individuals receiving an optional State supplement as specified in § 435.230 or individuals in categories specified by the agency under § 435.121."

4. Title 22, California Administrative Code, § 50409:

"50409. Transfer of Property Which Results in Ineligibility.

(a) Transfer of property shall result in ineligibility for Medi-Cal if the transfer did not meet at least one of the conditions specified in Section 50408 or the transfer was in return for an enforceable life care contract which includes complete medical care.

(b) Transfer of property without adequate consideration shall result in ineligibility for Medi-Cal if the transfer was made to establish eligibility or to reduce the share of cost.

(1) It shall be presumed that property transferred without adequate consideration was for the purpose of establishing eligibility or to reduce the share of cost.

(2) To overcome the presumption, the applicant or beneficiary has the burden of establishing by objective facts, rather than statement of subjective intent, that this presumption is not correct. The applicant or beneficiary shall provide evidence that adequate resources were available at the time of transfer of property for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources.

(A) The declaration of another purpose, such as to avoid probate, by itself, shall not be sufficient to overcome the presumption. A showing that the sole purpose of the transfer was for reasons other than to establish eligibility or to reduce the share of cost shall be supported by evidence such as that specified above.

(B) The establishment of the fact that the applicant or beneficiary did not have specific knowledge of the availability or benefits of the Medi-Cal program is not sufficient to overcome the presumption."

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 3340 Ocean Park Boulevard, Suite 3005, Santa Monica, California 90405: that on May 6, 1983, I served the within *Petition for Writ of Certiorari* in said action or proceeding by depositing three true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California, addressed as follows:

Gill De Ford, Esq.
Neal S. Dudovitz, Esq.
National Senior Citizens Law Center
1636 W. 8th Street, Suite 201
Los Angeles, California 90017

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 1983 at Santa Monica, California.

KIRK W. HARNEY
(Original signed)